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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,086	04/25/2005	Andreas Harz	2002DE106	4228

25255 7590 10/03/2007

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INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER	
ABU ALI, SHUANGYI	
ART UNIT	**PAPER NUMBER**
1755	

MAIL DATE	DELIVERY MODE
10/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/510,086	HARZ ET AL.	
	Examiner	Art Unit	
	Shuangyi Abu-Ali	1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07/19/2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 6-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 6-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

(1)

Status of Claims

Claims 1-13 remain for examination. Claims 1,8 and 11 are amended. Claims 4 and 5 are cancelled.

(2)

Response to Arguments

Applicant's arguments filed 07/19/2007 have been fully considered but they are not persuasive.

The amended independent claim 1 recites a composition comprising organic pigment and vegetable oil and paraffin oil. The cancel claim 4 recites the same limitation. Therefore the rejection for the cancelled claim 4 can be applied to amended independent claim 1 as following statement.

Applicant argues that the organic pigment in Ashley is different from the instant application. The Examiner respectfully submits Ashley discloses in claim 17 that the colorant is selected from the group consist of azo, tpm, methane, anthraquinone.

Applicant argues that the combined teaching of prior art to arrive at applicant's invention is Examiner's improper use of hindsight. The Examiner In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the

time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(3)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 1 –3 and 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over combined teaching of WO 00/76649 A1 to Lofgren et al. and WO 97/19030 to Tilokavichai et al., further in view of US 6,486,248 B2 to Ashley et al.

Regarding claims 1- 3, Lofgren et al. disclose a method of coating fertilizer particles with a coating composition comprising 75% of oil and 25% of talc (table 2). But they are silent about the specific oil used in the composition as applicant set froth in claim 1.

However, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to use vegetable oil in place of the mineral oil of Lofgren et al. as applicant set forth in claim 1, motivated by the fact that Tilokavichai et al., also drawn to coating fertilizer particles, disclose that although mineral oil is usable, vegetable oil is preferred from an environmental point of view (page 2, line 22)

But the combined teaching of Lofgren et al. and Tilokavichai et al. are silent about using organic pigment as applicants set froth in claim 1.

However, it would have been obvious to one of ordinary skill in the art at the time of invention to use an organic colorant such as an azo colorant to color fertilizer, motivated by the fact that Ashley et al., also drawn to fertilizer coating, disclose organic colorants used to color fertilizer granular to reduce colorant from bleeding and migration (abstract, col. 2, line 21).

Regarding claim 6, Lofgren et al. disclose a process of coating fertilizer particles, which comprise of nitrogen, phosphate and potassium (page 5, line 15).

Regarding claim 7, Lofgren et al. disclose a process of coating fertilizer particles comprising grinding additive added into the composition (page 4, line 30).

Regarding claim 8, Lofgren et al. disclose a process of coating fertilizer particles comprising that talc particles are dispersed in oil (page 5, line 29).

Regarding claim 9, Tilokavichai et al. disclose a process of coating fertilizer particles comprising fertilizer particles comprising of 0.1-1.5 wt% of pigment composition (abstract).

Regarding claim 10, Lofgren et al. disclose a process of coating fertilizer particles comprising of the step that the coating composition is applied to the fertilizer particles through spraying (abstract).

Regarding claim 11, Lofgren et al. disclose a process of coating fertilizer particles comprising of the step of diluting the composition with an organic liquid (abstract).

Regarding claims 12, Tilokavichai et al. disclose a method of making colored fertilizer particles (abstract).

Regarding claim 13, Tilokavichai et al. disclose a method of making colored fertilizer particles (abstract).

(4)

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shuangyi Abu-Ali whose telephone number is 571-272-6453. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SA

J.A. LORENGO
SUPERVISORY PATENT EXAMINER